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C O N S T I T U T I O N A L R E V I S I O N
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ANALYSIS OF CONVENTION ENABLING ACT

INTRODUCTION

The Constitutional Convention Provision of the Montana Constitution, Article XIX, section 8 of the Constitution of the state of Montana provides for the calling of constitutional conventions:

"The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

REFERENDUM 67

The Forty-first Legislative Assembly submitted to the electors of the state of Montana at the General Election, November 3, 1970, the question: ". . . whether the legislative assembly at the 1971 session, and in accordance with Article XIX, section 8 of the Montana constitution, shall call a convention to revise, alter, or amend the constitution of Montana." [Session Laws of Montana 1969, Chapter 65].

At the General Election on November 3, 1970, a total of 133,482 electors voted "For calling a constitutional convention" and 71,643 electors voted "Against calling a constitutional convention."

Article XIX, section 8 of the Constitution provides in part: ". . . . if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof."

The Forty-second Legislative Assembly is therefore under a constitutional mandate created by the vote of the people to call a constitutional convention. The existence of this duty is shown by the use of the word 'shall' in the constitutional provision and the referendum approved by the people. The proposed enabling act contains the requirements specified by Article XIX, section 8 are subject to the legislature's discretion.

DECLARATORY JUDGMENT PROCEEDINGS [Senate Bill No. 6]

Certain constitutional questions concerning the constitutional convention have been referred to the Montana Supreme Court by Senate Bill 6. These questions include:

1. If the house of representatives is reapportioned based on the 1970 census, shall the constitutional convention be apportioned on the basis of the house of representatives elected November 3, 1970 or the house of representatives to be elected November 7, 1972?
2. Does the phrase "elected in the same manner" in section 8, article XIX of the constitution of the State of Montana refer only to the constitutional provisions for election of representatives or does it also refer to contemporary statutory provisions for "nominations" and "election" of members of the house of representatives? May the legislative assembly provide for non-partisan nomination and election of delegates to the constitutional convention?
3. May state and local officers serve as delegates to the constitutional convention? Is a delegate to the constitutional convention a "state officer?"

The discretion of the legislature in legislating on these subjects will be determined by the court.

RECOMMENDATIONS OF THE MONTANA CONSTITUTION REVISION COMMISSION

The proposed enabling act is based on Article XIX, section 8 and recommendations adopted by the Montana Constitution Revision Commission. Briefly summarized, the recommendations of the Constitution Revision Commission are these:

1. The Convention should meet in the House of Representatives chamber in the State Capitol in Helena.
2. Nomination and election of delegates to the constitutional convention should be on a non-partisan basis. Nomination should be by petition without a primary election. The special election for delegates be held November 2, 1971.
3. Any person who otherwise qualifies but is a member of the legislative assembly or holds any other elective or appointive office under the constitution of law of this state should be able to serve as a member of the convention.
4. The three constitutional questions discussed above should be referred to the Montana Supreme Court for determination.
5. The convention should assemble for an organizational meeting November 29, 1971 of no longer than three days duration. The convention should assemble for the plenary session of the convention January 17, 1972 and remain in session as long as necessary, but not later than March 26, 1972, (60 days). The convention should assemble May 29, 1972 for final adoption and signing of the convention's proposals at a session of no longer than three days duration.
6. The convention should be authorized to select and employ such employees as it deems necessary for the conduct of its business, to fix their compensation and to make such other expenditures as it deems proper to carry out its function, but its total expenditure should be limited to the amount appropriated by law.
7. The convention should be required to keep a journal of its proceedings and a transcript of its debates.
8. The enabling act should provide for registration, licensing, and report of expenditures of lobbyists.
9. For each day of the organizational, plenary and signing sessions of the convention a possibility of sixty-six (66) days, the members and officers of the convention should be paid the same per diem, and expenses as provided for members and officers of the legislative assembly.

10. Members and officers should be entitled to mileage for three trips to and from their residences and Helena at the rate provided for the legislative assembly.

11. The revisions, alterations or amendments to the constitution should be submitted to the electors for their ratification or rejection at a special election on the same day as the general election to be held November 7, 1971.

12. The convention should be required to publish in full and disseminate to the electors each proposed revision, alteration, or amendment together with appropriate information explaining the proposals.

13. A temporary state agency known as the Montana Constitutional Convention Commission consisting of 12 members should be created to prepare for and assist the constitutional convention. The commission should compile, prepare and assemble essential information and materials for the delegates; disseminate information to the public on the constitution and convention; make convention arrangements including proposed rules and organization, site and facilities, the assembling and hiring of an interim staff for the convention; and disseminate information to the public on the proposals of the convention as directed by the convention.

14. The convention should be adequately funded by the state and federal funds should be sought for research and public informational activities.

TIME TABLE FOR CONVENTION

If the recommendations of the commission are adopted by the legislature the timetable for the convention and the events connected with it will be as follows:

Between March and November 1971	preparation and publishing of reports for the constitutional convention by the constitutional commission staff
April 1, 1971 to August 4, 1971	filing of statements of candidacy and nomination petitions
November 2, 1971	special election for election of delegates to convention

November 29, to November 31, 1971	Organizational meeting of convention
December, 1971	study by delegates and appointment of committees by president of convention
January 17, 1972	opening of plenary session
January 17, to March 26, 1972	plenary session of convention - sixty (60) days
March 27 to May 28, 1972	convention recess preparation of enrolled copy by committee on style
May 29 to May 31, 1972	final adoption and signing of convention's proposals
November 7, 1972	special election on same day as general election to adopt or reject the proposals of the convention
Effective date	The convention shall fix the date or dates upon which revisions, alterations or amendments, if adopted by the voters, take effect. Of necessity there will be situations where time will be needed to work out transitional details. It is therefore likely that parts of the proposals of the convention would not take effect until several years after it had been adopted.

ANALYSIS BY SECTION

CONVENTION CALL

Section 1. This section calls the constitutional convention in accordance with the constitutional mandate created by the vote of the people under article XIX, section 8, of the Montana constitution. As does article XIX, section 8, this section provides that the convention may prepare and propose: "Revisions, alterations, or amendments" to the constitution. The convention has only the power to propose; all revisions, alterations or amendments proposed by the convention must be approved by the electors of the state before they take effect.

DELEGATE APPORTIONMENT

Section 2. Article XIX, section 8, provides in part: "The number of members of the convention shall be the same as that of the house of representatives, and the shall be elected in the same manner, at the same places, and in the same districts." (Emphasis added) At present, section 43-106.2, R.C.M., 1947, provides for a total house membership of 104 elected from 38 districts. The 1971 legislative assembly is required by section 2, article VI of the constitution to revise and adjust the apportionment of the house and senate following the federal census of 1970.

The proposed section provides that the number of delegates and districts from which they are elected shall be the same as the house of representatives at the time the convention is called (the 1971-72 biennium).

Since the forty-second (42) legislative assembly is under a mandate to reapportion the senate and house according to the 1970 census, the commission also considered whether the "one man, one vote" ruling of the supreme court would compel the application of the same rules in selection of delegates to a constitutional convention and, therefore, require that the convention be apportioned on the basis of the 1970 census. The commission recommended that this question be referred to the supreme court for a determination.

DELEGATE QUALIFICATIONS

Section 3. Article XIX, section 8, provides in part that "The qualifications of members (of the convention) shall be the same as of the members of the senate . . ." As quoted in the section, article V, section 3 provides for the qualifications of members of the senate.

The eligibility of various state and local officers to serve as delegates to a constitutional convention has never been determined by a Montana court. The following three sections of the Montana constitution will need to be judicially interpreted and the commission recommended that the question be referred to the supreme court:

Article V, section 7 provides in part: "No member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office." (Emphasis added)

Article VII, section 4 provides in part: The governor, secretary of state, state auditor, treasurer, attorney general and superintendent of public instruction "shall not be eligible to . . . hold any other public office, except member of the state board of education during his term of office."

Article IX, section 35 provides: "No justice of the supreme court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed."

The basic question is whether a delegate to the constitutional convention is a "state officer." If permitted by the constitution, the commission recommends that an office holder should be eligible to serve as delegate to the convention and recommends that the enabling act specifically state their eligibility. The exclusion of all office holders in the state from a constitutional convention would be distinctly a loss to the state on account of the long and valuable experience of many of them in governmental affairs. State and local officers are also electors and as such should be as eligible to membership in a constitutional convention as any other qualified elector. Legislators served in each of Montana's three previous conventions.

SPECIAL ELECTION FOR ELECTION OF DELEGATES

Section 4. The commission strongly recommends the election of delegates be nonpartisan. It believes it would be best to keep partisan political controversies to a minimum in all aspects of the work of the convention. By prohibiting delegates from funding under specific party labels and express party auspices, the commission believes the convention would be more likely to attract a higher percentage of exceptionally interested, competent and experienced citizens to serve as delegates.

There are strong precedents for recommending that the election of delegates be nonpartisan. Recent conventions in: Alaska, Hawaii, Maryland, Arkansas, New Mexico and Illinois have been nonpartisan. Bipartisan conventions have been held in: Connecticut, Missouri, Pennsylvania, New Jersey and Rhode Island. Partisan conventions were held in Michigan and New York.

In the 1866 Montana convention, delegates were elected on a partisan basis; in 1884 the convention election was nonpartisan; and in 1889, the election was partisan, but provided for minority representation. Three delegates were elected from each district, but electors noted for only two in each district.

The current partisan primary law in section 23-3301 R.C.M., 1947 provided in part that:

"The primary election shall be held on the first Tuesday in June preceding any general election to select candidates for:

(3) Delegates to any constitutional convention who will be chosen at the ensuing general election."

Without repeal, this section would seem to require nomination of delegates at the partisan primary on June 5, 1972 and partisan election of delegates at the general election November 7, 1972. This would clearly be undesirable because it would require partisan election of delegates and put the convention off for two years. The commission recommends that this section be repealed and this is accomplished in section 10 of this act.

The following language in Article XIX, section 8, raises the question whether the legislature may provide for nonpartisan election of delegates: (delegates) . . . shall be elected in the same manner, at the same places, and in the same districts as members of the house of representatives." (Emphasis added)

The commission recommended that an interpretation of the phrase "elected in the same manner" should be sought from the Montana Supreme Court. Does it refer only to the constitutional provisions for election of representatives or does it also refer to contemporary statutory provisions for "nomination" and "election: of members of the house of representatives? May the legislative assembly provide for nonpartisan nomination and election of delegates to the constitutional convention?

The phrase "elected in the same manner" as it applies to delegates to constitutional convention has been interpreted in three state supreme courts. All three state Supreme Courts (New Hampshire, Nebraska, Illinois) that have interpreted this same phrase have held that "in the same manner" means only that the election provisions for delegates in an enabling act shall be based on the basic constitutional requirements for election of senators or representatives and not on every particular of the statutory provisions in force for the election of senators or representatives.

The cases have approved 1) nomination by a petition method unlike the normal petition nomination for members of the legislature then in force; (2) nonpartisan nomination and election of delegates, where the normal method for electing legislators was partisan; 3) election of delegates at an election other than a general election.

The three cases that have interpreted this language in other jurisdictions are:

Livingston v. Ogilvie 43 Ill. 9 2d (1969) The Illinois Constitution in Article XIV, section 1 provided in part that delegates to the constitutional convention shall "be elected in the same manner, at the same places, and in the same districts" as members of the senate.

The court held that "in the same manner" means only that the election provisions shall be based on the basic constitutional requirements for electing senators: that they "be elected by the people" (Article IV, section 1);

that the election be "free and equal" (Article II, section 18); that the voter meet certain age, citizenship and residence requirements (Article VII, section 1); and that "all votes shall be by ballot" (Article VII, section 2).

The court held that the provision in the Illinois Constitutional Convention enabling act prohibiting partisan participation and the use of political party designations in the election of delegates did not violate the "same manner" requirement of the constitution.

Baker v. Moorhead 103 Neb 811, 174 N.W. 430 (1919)
The court held that the words, "The convention shall consist of as many members as the House of Representatives, who shall be chosen in the same manner," contained in section 2, Article XV of the Nebraska Constitution, refer to the manner of electing representatives provided for in the constitution. The court further held the enabling act which provided for nomination of members to a constitutional convention by petition only, and which was in other respects unlike the general law relating to primaries and nominations by petition, was not unconstitutional as changing the manner of election. The court also ruled that election of delegates at a special election instead of the general election did not amount to a change of manner of election.

In re Opinion of the Justices, 76 N.H. 586, 79 Atl. 29 (1911)
The court held that the constitutional requirement that delegates to the constitutional convention be chosen in "the same manner" as representatives to the general court did not require election of delegates at the same time that representatives were elected but that they be chosen in the same manner specified by the constitution for members of the House of Representatives, namely, by the ballots of persons qualified to vote for senators. (Constitution, Part 2, Articles 9, 12 (13), 13 (4), 98 (99)).

If the Montana Supreme Court follows the precedent of these three cases the legislature will be able to provide for nonpartisan election of convention delegates.

Otherwise delegates will be elected and nominated as currently provided by statute for election and nomination of members of the house of representatives. These statutes provide for:

1. Party Primary -- Candidates for the house of representatives may be nominated by party primary (R.C.M., 1947, 23-3301) at a partisan primary that occurs on the first Tuesday in June preceeding any general election. The governor certifies the nomination of candidates for the legislative assembly (R.C.M., 1947, 23-3314) and their names are printed on the general election ballot (R.C.M., 1947, 23-3508).

2. Nominating Petition -- Candidates for the house of representatives may be nominated by a certificate of nomination if they are individuals or represent a political party that did not appear on the ballot in the next preceeding election (R.C.M., 1947, 23-3318). The names of candidates nominated for public office by a certificate of nomination are printed on the general election ballot (R.C.M., 1947, 23-3320).

The time table provided for in this section is based on the current election laws.

STATEMENT OF CANDIDACY AND NOMINATION PETITIONS -- FILING,
FILING FEES, DATES FOR FILING

Sections 5 and 6. These sections provide for the nomination of candidates by filing of Candidacy and Nomination Petitions for convention delegates. The statement of candidacy and nomination petition must be filed not earlier than 8 a.m., April 1, 1971, nor later than 5 p.m., August 4, 1971, with the secretary of state. The nomination petition must be signed by at least one hundred (100) but not more than two hundred (200) registered voters residing within the district. The form of the statement of candidacy, nomination petition certifications are based upon forms from the Illinois Convention Enabling Act and Montana statutes for initiative and referendum petitions. The filing fee of fifteen dollars (\$15.00) is the same as for legislative candidates.

This act does not provide for a primary or run-off election. All candidates nominated by petition would be placed on the general election ballot November 2, 1971. Voters would vote for the number of delegates to be elected from the district and the number of candidates in each district equal to the number of delegates to be elected from the district, who receive the greatest number of votes, would be elected as delegates to the convention.

Either a primary or a run-off election could also be provided. A primary election would be held prior to the general election and would reduce the number of candidates to twice the number of delegates to be elected from the district. As an alternative, a run-off election could be held after the general election between leading candidates in a district where no candidates received a majority (a majority would be required to elect).

Primaries are ordinarily used to select "party candidates" to compete in the general election. Only two states that have held recent constitutional conventions used primaries (Illinois and Michigan). The rest held only a general election. A primary election for the nomination of candidates to run in the special election would necessitate a second expensive special election. Such an election would cost approximately three hundred thousand dollars (\$300,000.00).

BALLOT FORM

Section 7. This section provides for the certification of names of candidates and the form of ballot, by the secretary of state, to the county registrars forty-five (45) days before the election. The section provides that the names of all candidates will be arranged on the ballots in the order in which the names are drawn by lot, and that no party designation or description appear on the ballot. As an alternative to arranging the names in the order in which they are drawn by lot, the names of the candidates could be rotated on the ballot.

ELECTION JUDGES

Section 8. This section provides for the appointment of election judges and clerks. Regular election judges and clerks would be used to the extent possible.

CONDUCT OF SPECIAL ELECTION

Section 9. The provisions of this section are the customary provisions for the canvassing, certification of votes, issuing commissions, and deciding tie votes, except in the event of a tie after a recount. This section provides that the candidate elected shall be decided by lot. Current law for legislators provides that the governor appoint an eligible person to hold the office (R.C.M., 1947, 23-4120).

The convention is made the final judge of the election returns and qualifications of its members. This is in accord with the usual practice with respect to constitutional conventions and is similar to the corresponding provision in Article V, Section 9, of the present constitution with respect to the qualifications and elections of members of the Legislative Assembly.

REPEAL OF PARTISAN PRIMARY STATUTE FOR DELEGATE NOMINATION

Section 10. This section provides for the repeal of that part of the current partisan primary law that would require delegates be nominated in a partisan primary June 5, 1972, and elected on a partisan basis at the general election November 7, 1972. This would clearly be undesirable because it would require partisan election of delegates and put the convention off for two years. The commission recommends that this section be repealed.

OATH OF OFFICE

Section 11. Article XIX, section 8 provides in part: "Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention." This section provides that members shall take and subscribe the oath provided in Article XIX, section 1, of the constitution for public officers.

FILLING VACANCIES

Section 12. Article XIX, section 8 of the constitution provides in part: "...vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly". This section incorporates the provisions from the R.C.M., 1947, which apply to filling vacancies in the Legislative Assembly.

CONVENTION SESSIONS, LOCATION

Section 13. The Constitution in Article XIX, section 8, requires that the convention meet within three (3) months after the election of delegates and that the ratification election occur not less than two (2) nor more than six (6) months after the adjournment of the convention. The legislature is to designate the day, hour and place of the convention's meeting. This section provides for three (3) sessions of the convention: a) An organizational session November 29 to November 31, 1971; b) The plenary session of the convention from January 17 to March 26, 1972, a period of sixty (60) days; c) A signing session from May 29 to May 31, 1972.

The organizational session of three (3) days is suggested for the limited purpose of organizing the convention, electing permanent convention officers, adopting rules of procedure, and providing for interim committees and staff members as may be necessary to prepare for the plenary meeting of the convention. The commission recommends that the organizational session be preceded by a one (1) or two (2) day orientation session that would include seminars and distribution of material prepared for the convention. The orientation and organizational meetings should permit the convention to proceed without delay when it assembles in plenary session. The month and a half between the organizational session and the plenary session will allow study by the delegates of material provided them and appointment of committees by the president of the convention. Organizational sessions have been used successfully in Illinois, Arkansas and Maryland.

The commission recommends that the plenary session of the convention be limited to sixty (60) days. In considering the desirable duration of the convention, the commission considered the experience of the other states, as well as Montana's, historic experience. Excluding the abnormally long Rhode Island and New Hampshire conventions, the average length of the twenty-seven (27) conventions held during the thirty-one (31) year period 1938-1969 was 2.6 months. Montana's first convention in 1866 met six (6) months. The second convention in 1884 remained in session 53 days, and the third convention in 1889 lasted forty-two (42) days.

The 1946 New Jersey convention (90 days); the 1955 Alaska convention (75 days); the 1969 New Mexico convention (60 days); the 1967-68 Maryland convention (120 days); and the 1969 Arkansas convention (120 days), completed

work within strict timetables set by their enabling acts. The North Dakota convention to meet next January is limited to thirty (30) days. On the other hand, the Missouri convention, upon which no time limitation was imposed, and no preparatory work done, dragged on for a year. Similarly the Michigan convention lasted seven and one-half (7 1/2) months.

Some commentators feel that the time limits imposed on the New Jersey and Alaska conventions account significantly for the effectiveness of those conventions, since the time limitation "appeared to have the salutary effect of giving everybody a sense of urgency. . . (and) there was evident a strong feeling of obligation to avoid filibuster or diversionary tactics that might endanger success." Graves, State Constitutional Revision 77, (1960).

Careful preparatory work should reduce the time required for the convention. Before the convention assembles, it will have been presented all the materials which have been prepared by the 1967-68 Legislative Council study of the constitution, the work of the Constitutional Revision Commission during 1969-70 and the studies to be prepared by the Constitutional Convention Committee proposed in section 26 of this bill. Therefore, the convention will not be meeting without the benefit of careful, comprehensive and official preparation for its work as was the case in Missouri's 1944 convention and to some extent in the case of the 1961 Michigan convention. The Illinois, Maryland, Alaska, Hawaii, Pennsylvania, Connecticut, New Jersey, New York, and Arkansas conventions were all assisted by preparatory commissions.

A time limit placed in the enabling act may well affect the kind and quality of the people who agree to stand for election as delegates. Men busily engaged in private business and professional life and the many public activities of the state may hesitate to commit themselves to undetermined periods.

In establishing a timetable for a convention, time must be allowed for the holding of hearings, for additional research for committee deliberations and for sufficient plenary sessions. To allow additional time (up to one (1) month), the convention is permitted, by a vote of the majority of the whole number of delegates, to extend the plenary session of the convention to a date not later than April 26, 1972.

The recess from March 26, 1972 to May 29, 1972, contemplates that the convention would complete its work by March 26. but final ratification and signing of the constitution by the convention would be delayed until May 29 to May 31, so signing and sine die adjournment would be within six (6) months of the ratification election November 7, 1972, as provided for in section 23 of this bill.

The commission recommends that the convention assemble in the chamber of the House of Representatives in the State Capitol in the city of Helena. For the duration of the convention the chamber should be designated "Convention Hall". The three (3) previous Montana Constitutional Conventions (1866, 1884, 1889) have met in Helena. There is no doubt that a state capital has advantages if chosen as the site of a constitutional convention. These are summed up by Professor Wheeler (Wheeler, The Constitutional Convention 8 (1961), as follows: "... the state capitol also has its advantages. It is the focal point of government activity and of public awareness. It contains the symbols of government upon which the attention of the people is focused. Physically, the legislative chambers offer a readymade site for deliberation. Committee rooms are usually available. Facilities exist for housing and feeding the delegates. Often the committees can draw upon the staff and clerical personnel of state agencies for assistance. Newspapers, radio and television have their staffs there. Possibly the chief advantage is the usual availability of study materials in the state or the supreme court library as well as the proximity of state officials for information and testimony.

It is clear that the city of Helena has all of the desirable facilities, and possesses the significant advantages referred to by Professor Wheeler. Not only are there accommodations for the delegates and visitors, but press, radio and television facilities would be adequate. In addition, the State Law Library is located in the capitol. Finally, Helena is centrally located.

The commission recommends that the sessions of the convention be held in the House of Representatives chamber in the Capitol because it is large enough, is equipped with the necessary voting machinery, and has the other facilities which would make it ideal. The commission recommends that the facilities, furniture, fixtures, supplies and other property of the Montana Legislative Assembly be made available for the use of the convention. The sessions of the convention would not conflict with any regular session of the legislature and any special session could be called so it would not coincide with the convention.

The Alaska and New Jersey conventions were held in university towns. Some observers have recommended that the convention be removed from the "political" atmosphere of the state capitol. A university campus has several advantages. An atmosphere of scholarly detachment may have a favorable impact upon the delegates, helping them to achieve broader, more objective perspectives. In addition, the campuses contain adequate facilities for housing and feeding the delegates, rooms suitable for hearings, committee meetings and plenary sessions, and library. A convention held on a campus would probably have to be scheduled during the summer recess. The commission feels the physical advantages of the capitol

outweigh its "political" liabilities.

The Convention will adopt its own rules of procedure, but until it does, the commission recommends that Mason's Manual of Legislative Procedure govern the procedure of the convention.

The commission feels that the governor is the most appropriate official to call the convention to order and preside until a temporary president is elected.

The Constitutional Convention Commission should prepare an organizational manual for the Constitutional Convention to outline the steps considered necessary for the convention's early sessions.

PRIVILEGE FROM ARREST

Section 14. This section provides for delegate's immunity from arrest in accord with the usual practice with respect to constitutional conventions and legislative bodies and is similar to the corresponding provision in Article V, section 15 of the Montana Constitution with respect to the Legislative Assembly.

EMPLOYEES OF CONVENTION

Section 15. In order for the convention to perform its work effectively, it must be provided with an adequate and experienced staff. The convention is the hiring authority. This cannot be a last-minute undertaking, however. The Constitutional Convention Commission should study staff needs, prepare a list of position and prospective employees for consideration by the convention. The staff of the Constitutional Convention Commission will be made available to the convention when it convenes.

Sections 18(2) and 26(7) of this bill provide that the commission and convention may borrow state and local officers and employees with the consent of the employing agency. These provisions will enable the convention to utilize state and local employees with special training or experience.

Article XIX, section 8 provides in part that the legislative assembly shall provide for: "... the necessary expenses of the convention". This section limits expenditures of the convention for all purposes to the amount appropriated by the Legislative Assembly.

CONVENTION RULES, JOURNAL AND TRANSCRIPT

Section 16. This section provides that the convention shall adopt rules of procedure. The Constitution Convention Commission should prepare a set of proposed rules. Section 13(3) provides that until the convention has adopted rules of procedure, Mason's Manual of Legislative Procedure govern the procedure of the convention.

Ordinarily convention procedural rules are brief, defining such things as the necessary majority and quorum, the officers of the convention and standing committees, the powers of these respective bodies, the floor procedures as to debate and the introduction of motions and drafts, and often the number of duties of convention employees such as secretaries, clerks and reporters. The commission will be able to review the rules of recent constitutional conventions in other states, the rules of the 1866, 1884 and 1889 Montana Conventions and the rules of the Montana Legislative Assembly in preparing the proposed convention rules.

Both the 1884 and 1889 conventions debated the importance of recording their deliberations, and both conventions decided that their work would be eased and the future served by maintaining careful accounts of convention debates and decisions. The Montana legislature arranged for the publication in 1921 of the debates and proceedings of the 1889 convention but the records of the 1884 convention were never printed and available only in the files of the office of the secretary of state. Records of convention activities will be invaluable sources of information to future interpreters of the constitution, to students of the governmental process and to historians. Conventions will always face pressure to keep expenses down and one way to do so is to limit the number of records kept, but this is a poor form of economy. The importance of a journal and transcript of debates cannot be overestimated and the commission recommends that they be required.

DUTIES OF PUBLIC OFFICIALS AND EMPLOYEES

Section 17. This section imposes a legal duty on all public officers and employees to appear before the convention or any committee thereof and to furnish the convention with public records that the convention requests. The convention is given the power to compel the attendance and testimony of witnesses on application to any district court judge.

CONVENTION USE OF GOVERNMENT FACILITIES AND EMPLOYEES

Section 18. This section permits the convention to borrow the facilities of the state, municipalities or counties when such use is not disruptive of regular governmental activity. This provision would permit public hearings at locations away from the capital. Some could be held around the state to carry the convention into the local communities and to provide additional sources of information and public opinion.

As discussed in the comment to section 15, this section also permits the convention to borrow state, municipal and county officers and employees. Some consideration should be given to providing a bonus in addition to regular salary for such employees for their overtime work during a convention.

SCHEDULE OF LEGISLATION

Section 19. It is contemplated that the convention will submit, with any constitutional changes it proposes, a "schedule of legislation" which will be necessary to complement the constitution and which cannot await the next session of the Legislative Assembly. The schedule should be attached to the proposals of the convention when the proposals are submitted to the voters for ratification. It should not, however, be subject to separate approval or disapproval and the commission recommends that if the proposals of the convention are adopted, the accompanying schedule shall be deemed to have been adopted also. Since this is a schedule of legislation, it is not a part of the constitution, but will have the effect of a public general law. Thereafter, it may be amended or repealed by law. It should be noted that the "schedule of legislation" is different from the "schedule of transitional provisions" referred to in sections 20 and 23(10) of this bill.

SCHEDULE OF TRANSITION

Section 20. The convention shall fix the date or dates upon which revisions, alterations or amendments, if adopted by the voters, take effect. Of necessity there will be situations where time will be needed to work out transitional details. It is therefore, likely that the convention will provide that parts of the proposals of the convention will not take effect until several years after they have been adopted by the people. The "schedule of transitional provisions" referred to will be a part of the constitution and will not be subject to amendment or repeal by law, but its provisions will expire or become obsolete after the lapse of time, and thereafter, it will not be necessary that it be printed as part of the constitution.

LICENSING OF LOBBYISTS

Section 21.. The commission recommends the enabling act provide for the registration, licensing and report of expenditures of lobbyists. This section provides that the current statutes regulating and licensing legislative lobbyists shall apply to lobbying at the constitutional convention. Current statutes provide regulations for lobbying during the legislative session by any person, corporation or association or any board, department, commission or agency of the state or any county or municipal corporation. In addition to the registration and licensing requirements of the current lobbying statutes, this section provides that lobbyists submit semi-monthly financial reports on all expenditures made to promote or oppose constitutional provisions.

COMPENSATION OF CONVENTION DELEGATES

Section 22. Article XIX, section 8 of the Constitution provides in part: "The legislative assembly shall in the act calling the convention . . . fix the pay of its members and officers, and provide for the payment of same..." The commission recommends that delegates and officers to the constitutional convention be paid per diem, expenses, and mileage on the same scale as members of the 1973 legislative assembly as provided for by the 1971 legislative assembly. Under this section and section 13 delegates would be paid per diem and expenses for a maximum of sixty-six (66) days and mileage for three (3) trips to and from their residences and Helena by the nearest travelled route. The three (3) trips would provide for attendance at the organizational, plenary, and signing sessions of the convention.

The commission recommended that officers and employees of the state and its political subdivisions who are elected and serve as delegates to the convention should be granted leave, without pay from their employment during the time the convention is in session, and they should be entitled to the per diem, expenses and mileage for delegates.

RATIFICATION ELECTION

Section 23. Article XIX, section 8 of the Montana constitution provides in part that the revisions, alterations, or amendments proposed by the convention "... shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two (2) nor more than six (6) months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect."

This section provides that unless changed by act of the convention, the revisions, alterations or amendments to the constitution proposed by the convention shall be submitted to the electors for their ratification or rejection at a special election on the same day as the general election to be held November 7, 1972.

The commission recommends that the ratification election be held as a "special election" on the same day as the general election. Such a special election would minimize additional election expenses and increase voter participation. The majority for ratification: ("a majority of the electors voting at the election") necessitates the holding of a "special election" on the same day as the general election, instead of making the ratification part of the general election. Since twenty-five (25) percent of the electors who vote in general elections do not vote on constitutional questions, if the proposals of the convention were placed on the general election ballot they would almost certainly not receive the vote of a majority of the electors voting at the election.

If the ratification election is held at the general election in 1972 the commission recommends that no amendments to the present constitution be submitted to the voters by the 1971 Legislative Assembly for their approval at the 1972 general election. The Executive Reorganization Amendment, adopted November 3, 1970, would permit additional amendments in 1974 and 1976 in the event that the proposals of the convention were not adopted.

After the convention has adjourned it will be necessary to acquaint the public with the proposals of the convention. There should be adequate time for informing the electorate about this important document which it will be asked to adopt or reject. The schedule in this bill allows the maximum six (6) months between final adoption of the proposals by the convention and their submission to the people.

The convention will decide the manner of submission. The manner in which the proposals of the convention are submitted should be calculated to ascertain as completely and conveniently as possible the public will. The rejection by the voters of New York, Rhode Island and Maryland of proposed new constitutions present in a single package tends to support the conclusion that success is more likely if highly controversial issues are submitted separately. As the Advisory Commission on Intergovernmental Relations pointed out in its annual report for 1968:

"Voter reaction may have indicated that the electorate is more favorably disposed when it can say "yes" or "no" to the separate component parts of a new constitution rather than having to accept or reject an entire new basic charter on a "take it or leave it basis."

This view has borne out during 1968, 1969, and 1970 by success in Pennsylvania, Florida, Hawaii, and Illinois where proposals were offered in a series of separate propositions and failures in New Mexico and Arkansas of single packages. Submission in a single package consolidates and strengthens the effect of opposition to particular parts of a proposed document; presentation of highly controversial issues separately tends to fragment and weaken the opposition.

This section provides for the publication and distribution of the convention's proposals to the voters. The convention is also authorized to prescribe the manner and form of voting on the proposals, the manner and form of notice of the election, and the manner of tabulating, returning and canvassing the votes cast at the election.

If the proposals of the convention are approved by a majority of the electors voting at the special election, the governor shall declare them adopted, but the proposals take affect only as provided in the schedule adopted by the convention.

QUALIFIED ELECTORS

Section 24. This section declares that all qualified voters are entitled to vote in elections held under this bill.

ELECTION LAWS

Section 25. Section 4 and section 23(11) of this act provide that except as otherwise provided in this act, each election conducted under this act shall be governed by the election laws of the state of Montana. This section requires state and local officials to do all things which are appropriate to the holding of each of the special elections.

CONSTITUTIONAL CONVENTION COMMISSION

Section 26. Careful advance preparation is indispensable for modern constitution making and revision. Since the 1915 New York constitutional convention established the pattern for preparatory research, no modern constitution approved by the voters has been drafted or extensively altered without systematic research and careful preparation of materials. No group of constitution-makers can be expected to have the personal knowledge necessary to deal with the complex issues and problems that confront them in performing their task effectively.

This section creates a temporary state agency known as the Montana Constitutional Convention Commission, consisting of twelve (12) members, to prepare for and assist the constitutional convention. The commission is authorized to undertake studies and research; to compile, prepare and assemble essential information and materials for the delegates; to disseminate information to the public on the constitution and convention; to make convention arrangements including proposed rules and organization, site, and facilities, the assembling and hiring of an interim staff for the convention and to disseminate information to the public on the proposals of the convention as directed by the convention.

The commission should assemble a library on constitutional revision for the use of the delegates and prepare a series of manuals for the use of the delegates. Included would be a manual for organizing the constitutional convention, including a set of proposed rules, and manuals on each substantive area of the constitution. The research personnel who prepare the studies will be available as a resource person to the substantive committees of the convention.

The commission will have the responsibility of keeping the story of the convention before the people. The commission can keep the public informed on the election of delegates, convention preparations, convention organization, the issues that arise, the significant differences of opinion, the tentative settlements, and the final proposals. Through imaginative informational activities, wide public interest

in the convention may be maintained throughout its deliberations. If this is done, the final convention task of explaining to the people the proposals of the convention will be made easier. With an adequate informational program, the voters will be well prepared to pass sound judgment of the conventions proposals when the time comes to vote.